



## ***CLOSED CASE SUMMARY***

ISSUED DATE: OCTOBER 23, 2020

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0188

### **Allegations of Misconduct & Director's Findings**

#### **Named Employee #1**

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete In All Communication	Not Sustained (Inconclusive)

#### **Named Employee #2**

Allegation(s):		Director's Findings
# 1	Retaliation and Harassment	Not Sustained (Unfounded)

***This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.***

### **EXECUTIVE SUMMARY:**

The Complainant, an EEO investigator, referred allegations of misconduct by an SPD employee who alleged that he was transferred in retaliation for reporting misconduct by a supervisor. The employee also alleged that a sergeant was dishonest when he confronted him about the transfer.

### **SUMMARY OF INVESTIGATION:**

This investigation concerns the allegedly retaliatory transfer of Witness Officer #1 (WO#1) from SPD's Navigation Team back to patrol by a Lieutenant – Named Employee #1 (NE#1), as well as allegedly purposefully inaccurate information regarding this transfer provided to WO#1 by a Sergeant – Named Employee #1 (NE#1).

WO#1 was first assigned to the Navigation Team in October 2019 to work on the RV Remediation Team for a 30-day trial period. He was supervised by an Acting Sergeant. His 30-day trial period was continually extended and, at the time of this OPA investigation, WO#1 remained assigned to the Navigation Team.

On February 9, 2020, WO#1 and another officer – Witness Officer #2 (WO#2) – became aware that the unit commander – Named Employee #2 (NE#2) – may have misused City resources. They reported their concerns to the Acting Sergeant and this matter was subsequently reported to OPA. On February 12, 2020, OPA initiated its investigation (see 2020OPA-0103). On February 15, 2020, NE#2 received a notice of complaint. In relation to that investigation, NE#2 was physically reassigned from the Navigation Team on February 27, 2020; but she continued to supervise it remotely until her transfer was finalized.

On February 27, an administrative specialist at the South Precinct requested WO#1's transfer back to the South Precinct, effective March 4, 2020. She was unable to recall who initially requested the transfer. WO#1 learned of the transfer when the Acting Sergeant, who had been transferred to the Background Unit, looked in the Employee Move



Tracking (EMT) system regarding his own transfer and saw that WO#1 was to be transferred as well. The Acting Sergeant then notified WO#1. WO#1 confronted another supervisor on the Navigation Team – Named Employee #1 (NE#1) – about the transfer. NE#1 told WO#1 that he was unaware of the transfer or who had requested it.

That same day, WO#1 also spoke to a civilian employee of the Navigation Team – Civilian Witness #1 (CW#1). CW#1 said that he attended a morning briefing the day prior for sworn and civilian supervisors on the Navigation Team. This was a meeting that was held every Wednesday. While sworn and civilian supervisors would participate in these meetings, officers did not typically attend. According to WO#1, CW#1 told him that NE#1, who attended that meeting, discussed WO#1's impending transfer.

Based on what he learned, WO#1 believed that his transfer may have constituted retaliation by NE#2 and that NE#1 may have been purposefully dishonest with WO#1 concerning his knowledge of the transfer. He reported this to the Department's EEO investigator who, in turn, made an OPA referral. This investigation ensued.

OPA accessed the EMT system and determined that the current Chief of Police (who was then the Deputy Chief) was the final approver on the transfer order. On February 28, the Chief approved the return from the Navigation Team effective March 18, 2020. OPA emailed a series of questions to the Chief concerning this matter. The Chief indicated that he became aware of the transfer at or around the time that it occurred. The Chief did not recall who initiated the transfer. His understanding was that WO#1 was on a temporary assignment with the Navigation Team and, as such, was due to return to his previous assignment in patrol. The Chief did not indicate any awareness of a retaliatory purpose for the transfer.

OPA also interviewed a number of sworn and civilian witnesses. CW#1 declined to provide a recorded interview. He told OPA that he did not recall discussion of WO#1 or a transfer at the Wednesday meeting. He said that to his knowledge, there were no issues with WO#1's performance in the unit. OPA also interviewed two other civilian supervisors who attended the meeting. Civilian Witness #2 (CW#2) stated that she did not recall any conversation regarding WO#1 at the meeting. She said that it would be unusual to discuss personnel moves at the Wednesday morning meeting. Civilian Witness #3 (CW#3) did state that he remembered NE#1 saying that WO#1, WO#2, and the Acting Sergeant would all be transferred back to patrol. He stated that NE#1 did not provide any reason for the transfer at the meeting. CW#3 also recounted a prior instance in which he had a conflict with NE#1 which was unrelated to the facts of this case. CW#3 stated that, during this incident, he suffered an assault while on duty with the Navigation Team and NE#1 declined to make an arrest.

NE#1 stated that he did not recall any discussion of WO#1's transfer at the Wednesday meeting and learned of it when WO#1 confronted him. NE#1 said that he never directly supervised WO#1, and that his only conversations about WO#1's assignment occurred in December of 2019, when a new Captain took over supervision of the Navigation Team.

NE#2 told OPA that WO#1's transfer to the RV Remediation Unit (and the Navigation Team generally) was on a temporary basis. She stated that, when WO#1 came to her unit, she was told to do a 90-day temporary assignment rather than the standard 30-day rotation. She said she had no intent to remove WO#1 from the Navigation Team and was only alerted to it when the EMT notice came to her. The transfer was initiated during the time that she oversaw the Navigation Team remotely and she did not know where it originated from. NE#2 was unable to provide any additional information about the reason for the proposed transfer.



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**ANALYSIS AND CONCLUSIONS:**

**Named Employee #1 - Allegation #1**

***5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete In All Communication***

SPD Policy 5.001-POL-11 requires Department employees to be truthful and complete in all communications. If NE#1 was aware of WO#1's transfer but then misled WO#1 when asked about his knowledge, this could have constituted dishonesty.

Ultimately, there is insufficient evidence to show that NE#1 was aware of or discussed WO#1's transfer prior to WO#1 confronting him about it. While CW#3 stated that he recalled NE#1 discussing that officers would be moving back to patrol, both of the other civilian witnesses present at the meeting said they could not recall that conversation. Since NE#1 never directly supervised WO#1, it is not evident that he would have been in a position to know about the transfer in advance. As such, OPA cannot determine what was discussed at the meeting and lacks sufficient evidence to conclusively establish what NE#1 knew and when.

For these reasons, OPA recommends this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained (Inconclusive)**

**Named Employee #2 - Allegation #1**

***5.001 - Standards and Duties 14. Retaliation is prohibited***

SPD policy precludes its employees from engaging in retaliation. (SPD Policy 5.001-POL-14.) SPD employees are specifically prohibited from retaliating against a person who engage in activities including, but not limited to, "oppos[ing] any practice that is reasonably believed to be unlawful or in violation of Department policy" or "who otherwise engages in lawful behavior." (*Id.*) Retaliatory acts are defined broadly under SPD's policy and include "discouragement, intimidation, coercion, or adverse action against any person. (*Id.*)

Had NE#2 ordered WO#1's transfer and that of the other officers in order to retaliate against them for reporting her own misuse of City resources, it is likely that OPA would find she committed retaliation. However, OPA did not uncover evidence indicating that NE#2 had advance knowledge of the transfer or, if she did, that she possessed an intent to retaliate. OPA reaches this conclusion because NE#2 was not the final approver of the transfer, and no records or testimony exists showing that NE#2 initiated the request or caused another to do so. Indeed, apart from the timing of the transfer there is no evidence linking NE#2 to the decision to return WO#1 to the South Precinct. However, this, in and of itself, is insufficient to establish misconduct on NE#2's part.

Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**